

1 PAUL B. SNYDER  
2 United States Bankruptcy Judge  
3 1717 Pacific Ave, Suite 2209  
4 Tacoma, WA 98402

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December 8, 2006

MARK L. HATCHER  
CLERK U.S. BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA  
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DEPUTY

8 **UNITED STATES BANKRUPTCY COURT**  
9 **WESTERN DISTRICT OF WASHINGTON AT TACOMA**

10 In re:

11 RICHARD MICHAEL CARLSON and PEARL  
12 KAYE CARLSON,

Debtors.

Case No. 06-40402

**MEMORANDUM DECISION**  
**NOT FOR PUBLICATION**

13 This matter came on for hearing on November 7, 2006, on the Objection to Claim of  
14 Vanderbilt Mortgage Finance (Vanderbilt) filed by Richard Michael Carlson and Pearl Kaye  
15 Carlson (Debtors). Based on the pleadings and arguments presented, the Court's findings of  
16 fact and conclusions of law are as follows:

17 **FINDINGS OF FACT**

18 On March 10, 2006, the Debtors filed bankruptcy under Title 11, Chapter 13. On  
19 March 27, 2006, Vanderbilt filed a proof of claim in the amount of \$59,516.56, alleging a  
20 security interest in a 1997 Fleetwood Waverly Crest manufactured home (Manufactured  
21 Home). On October 24, 2006, Vanderbilt filed an amended proof of claim in the amount of  
22 \$38,200.00. Vanderbilt again amended its Proof of Claim on November 2, 2006, setting forth  
23 a total claim of \$59,516.56: \$38,200.00 secured and \$21,316.56 unsecured.  
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1 The Debtors filed an objection to Vanderbilt's proof of claim. The Debtors alleged that  
2 the Manufactured Home has a value of \$33,563.77 without deducting the costs to move the  
3 Manufactured Home, but argued that the selling price, if sold by a retail merchant, would be  
4 reduced by the moving costs. While the Debtors are the owners of the Manufactured Home,  
5 the real property is owned by Richard Carlson's father, Eino Carlson. It is not disputed that  
6 this real property is subject to a conditional land permit, so that because Eino Carlson passed  
7 away post hearing, there is longer a legal basis for the Manufactured Home to remain on the  
8 real property, and it will have to be moved.  
9

10 The Debtors argue that the costs of relocating the Manufactured Home, which are  
11 projected to be \$11,747.32, should be deducted when determining Vanderbilt's secured claim.  
12 Based on the N.A.D.A. Appraisal Guides submitted by the Debtors, the value of the  
13 Manufactured Home, and therefore Vanderbilt's secured claim, is \$21,816.45 after deducting  
14 moving costs.

15 The Court initially heard argument on the Debtors' objection to claim on October 3,  
16 2006. Thereafter, the parties submitted briefing on the issue of whether the costs to move the  
17 Manufactured Home should be deducted in establishing the value of Vanderbilt's secured  
18 claim, pursuant to 11 U.S.C. § 506(a)(2). The Court considered additional oral argument on  
19 November 7, 2006.  
20

### 21 **CONCLUSIONS OF LAW AND DISCUSSION**

22 This case was filed on March 10, 2006, and thus is controlled by the Bankruptcy Abuse  
23 Prevention and Consumer Protection Act of 2005 (BAPCPA). The governing statute, 11  
24 U.S.C. § 506(a), was amended to add a new subparagraph (2), as follows:

25 If the debtor is an individual in a case under chapter 7 or 13, such value with  
respect to personal property securing an allowed claim shall be determined

1 based on the replacement value of such property as of the date of the filing of  
2 the petition without deduction for costs of sale or marketing. With respect to  
3 property acquired for personal, family, or household purposes, replacement  
4 value shall mean the price a retail merchant would charge for property of that  
kind considering the age and condition of the property at the time value is  
determined.

5 The parties agree that the Manufactured Home was acquired for personal, family, or  
6 household purposes.

7 Based on the plain language of the statute, the issue before the Court is what price  
8 would a retail merchant charge for property the same kind as the Manufactured Home  
9 considering its age and condition at the time value is determined? At least one bankruptcy  
10 court has interpreted the controlling sentence of 11 U.S.C. § 506(a)(2) precisely as it is  
11 written: that a retail value or price is the appropriate standard by which to determine  
12 replacement value. In re Eddins, --B.R.--, 2006 WL 3257142 (Bankr. W.D. Okla. Oct. 17,  
13 2006). The Court is unaware of any case law that further examines the definition of retail  
14 value or price. Additionally, neither the Bankruptcy Code, nor the legislative history,<sup>1</sup>  
15 provides a definition for “retail merchant.”  
16

17 Black’s Law Dictionary defines the noun “retail” as, “[a] sale for final consumption in  
18 contrast to a sale for further sale or processing (i.e. wholesale). A sale to the ultimate  
19 consumer.” Black’s Law Dictionary 1315 (6th ed. 1990). Black’s Law Dictionary defines a  
20 “merchant” as “[o]ne who is engaged in the purchase and sale of goods; a trafficker; a retailer;  
21 a trader. Term commonly refers to person who purchases goods at wholesale for resale at  
22 retail . . . .” Black’s Law Dictionary 987 (6th ed. 1990).  
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25 <sup>1</sup> The legislative history of BAPCPA, including 11 U.S.C. § 506(a)(2), is located at House  
Report No. 109-31, pt. 1, 109th Cong., 1st Sess. 83 (2005).

1 After filing its original proof of claim, Vanderbilt had the Manufactured Home appraised  
2 at a market value of \$38,226. Vanderbilt contends that a retail merchant would not deduct the  
3 cost of relocating a manufactured home in determining its market value or price. Vanderbilt,  
4 however, has provided no authority to support its position, nor has it provided the Court a  
5 copy of its appraisal.

6 The Debtors contend that having to move the Manufactured Home off the current real  
7 property unquestionably affects its overall value. The Debtors have provided no legal or  
8 evidentiary authority to support this position.

9 The Debtors, however, have provided the Court a copy of the N.A.D.A. Appraisal  
10 Guides, on which they relied in determining the value of the Manufactured Home. This  
11 Appraisal Guide is of some assistance to the Court since it takes into account the size and  
12 condition of the Manufactured Home, as required by 11 U.S.C. § 506(a)(2). More importantly,  
13 it identifies the “Total Adjusted (Retail) Value of Home and Optional Equipment,” which is  
14 listed as \$33,563.77. (emphasis added). It then provides a “Wholesale Value,” and specifies  
15 this as “Moved for Resale,” which is listed as \$21,816.45. Based on this Appraisal Guide, the  
16 “retail value” clearly is distinct and different from the “moved for resale” wholesale value, and  
17 the “retail value” does not take into consideration moving costs. Rather, deducting the moving  
18 costs from the retail value results in the “wholesale value.” The Debtors’ own appraisal  
19 appears to establish that retail value, which this Court must consider in determining secured  
20 value pursuant to § 506(a)(2), does not take into account projected moving costs of the  
21 Manufactured Home. Utilizing the N.A.D.A. retail value for purposes of § 506(a)(2) is  
22 consistent with the approach taken by the court in Eddins, --B.R.--, 2006 WL 3257142 at \*3.  
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1 This result also is supported by a pre-BAPCPA Chapter 13 case that decided the  
2 proper method of valuing a mobile home under 11 U.S.C. § 506(a). In re Rowland, 166 B.R.  
3 172 (Bankr. N.D. Fla. 1994). While the court's ultimate decision regarding the proper  
4 valuation method is not relevant post-BAPCPA, the analysis of the valuation methods is  
5 relevant. In Rowland, the debtors argued that the "moved to resale" wholesale value was the  
6 best standard for valuation. In re Rowland, 166 B.R. at 174. The court explained that under  
7 the "moved to resale" valuation method, a wholesale price is reached by applying a factor to  
8 the retail value of the mobile home. This factor takes into consideration dealer commissions,  
9 profit, and expenses of moving the mobile home to the sales lot, and then moving it again to  
10 the retail purchaser's lot. In re Rowland, 166 B.R. at 174. Thus, based on the explanation  
11 set forth in Rowland, the retail value does not include consideration of moving costs.  
12 Rather, the wholesale value is determined by deducting certain costs, like moving costs, from  
13 the retail value.  
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15 Accordingly, on the issue of moving costs, the Debtors' objection to claim is denied.

16 DATED: December 8, 2006

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18 Paul B. Snyder  
19 U.S. Bankruptcy Judge  
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